

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL DAVID HILL,

Defendant - Appellant.

No. 04-50412

D.C. No. CR-02-01187-DDP

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

David Michael Hill appeals the sentence imposed following his guilty plea to possession of child pornography in violation of 18 U.S.C. § 2252(a)(5)(B). Hill contends that this case should be remanded pursuant to *United States v. Booker*,

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

125 S. Ct. 738 (2005) because he was sentenced under the mandatory guidelines. The district court, however, recognized at the sentencing hearing that the Sentencing Guidelines were being challenged, and sentenced Hill alternatively. The district court judge stated that, alternatively, “under my general sentencing authority I am imposing exactly the same sentence.” This is one of those rare situations where the record is clear that the district court would impose the same sentence knowing the guidelines were advisory. *See United States v. Ameline*, 409 F.3d 1073, 1083 (9th Cir. 2005) (en banc). Accordingly, we affirm.

AFFIRMED.